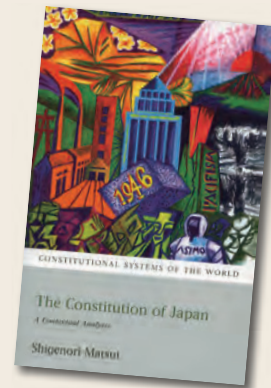


<BOOK REVIEW>The Constitution of Japan : A Contextual Analysis, by Shigemori Matsui

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BOOK REVIEW

*The Constitution of Japan:
A Contextual Analysis***Shigenori Matsui**Hart Publishing, 2011
289 pages. ISBN 978-1841137926

The Constitution of Japan is a concise introduction to the constitutional law of Japan and fills an important need in the English language literature. It is part of a series of books on constitutional systems of the world, edited by two distinguished comparative legal scholars, Andrew Harding and Peter Leyland. The series adopts what it calls a contextual approach, meaning that it examines legal doctrines and norms in light of their broader social, political and historical milieus. Surely this is the appropriate way to understand constitutional law, which by its nature is a field at the intersection of politics and law. In the case of Japan, Professor Matsui emphasizes the roles of the strong bureaucratic tradition dating from the Meiji era, the long-time LDP rule in the postwar period, and the role of the judiciary in shaping how the Constitution actually functions.

Matsui's volume is thoroughly up-to-date, citing recent cases and debates through the time of publication. It is also comprehensive, addressing the major topics—constitutional history, rights, the role of the political organs, the people and the emperor, and Article Nine—in discrete sections written in accessible language. Throughout, he refers to major controversies both within legal scholarship but also within the broader political discourse, elaborating both sides of the issue while also presenting his own views.

Matsui is particularly good at exploring the reasons for the relatively low levels of judicial review of both legislation and administrative action in Japan. As he notes, judicial control over the executive is generally quite ineffective; furthermore, even though the Constitution contains a fairly comprehensive set of rights, "individual rights are subject to various legislative restrictions, some of which are highly unreasonable" (p. 174). The Supreme Court has developed a remarkably conservative jurisprudence, which Matsui attributes to a combination of heavy caseload, careful screening of justices by a conservative political establishment, and the views of the judiciary as a whole. Unlike, say, the United States, where the constitution has been thoroughly legalized, Japanese judges tend to view the constitution as a more political document, and to see their own role as restricted to a narrower legal sphere. This ideational account complements the more widely used political explanations for the Court's quiescence.

In comparative terms, Japan is remarkable for its constitutional stability. It has never passed a constitutional amendment, and the 1946 Constitution is older than those of all but 15 countries in the world today. At the same time, the rumblings of constitutional change

can be felt in Japan. The second Abe administration continues its methodical attempt to amend the Constitution, focused immediately on reducing the amendment threshold. The current requirement of 2/3 of both houses of the Diet and a public referendum is seen as too high, and current proposals would reduce the threshold in the Diet to a simple majority in both houses. Lurking underneath these facially neutral proposals are the deeply contested politics of Article Nine. Professor Matsui treats the debates in an evenhanded manner in the last section of the book.

One also wonders if Japan's long quiescent judges, after a decade of legal reform, may soon show a willingness to take a more active role in the polity, overcoming the ideational constraints. While not enacted at a constitutional level, many of the recent legal reforms (for example, the introduction of the new quasi-jury *saiban'in* system) were designed to change the relationship between the Japanese citizenry and the state. In this sense, they seek to transform the operation of the formal constitutional order, and form an important part of the context to keep an eye on in years ahead.

Professor Matsui's volume is the first major treatment of Japanese constitutional law to appear in English in several years, and will be accessible to students and scholars alike as an excellent introduction to the field. The volume is easy to use, with a handy table of constitutional articles and legislation, as well as suggestions for further reading for those so inclined. While it would have been nice to have the complete text of the Constitution in the volume, this omission was no doubt a conscious decision by the editors of the entire series, as many countries' constitutions are far longer than that of Japan, and would have swamped the analysis.

Reviewed by Tom Ginsburg